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the rights of others. The wife can claim her dower only in case she survives her husband and until then she should not be allowed to dictate either to the husband, or to anyone holding under him, as to the use made of the property. As has been said: "Her right is always inchoate and subject to the changes, improvements, dilapidation, or depreciation which may occur during his lifetime. Any other rule would occasion great confusion as to what one may or may not do with his own property."¹⁵ It would seem proper that the same incidents of property should attach to the wife's contingent dower right when the alienee has the property as when the husband has it. Thus, where a wife has dower in the equitable estate of her husband and the latter buys real estate and takes title in another, the wife can maintain a bill to protect her interest against the possibility of a conveyance to innocent purchasers, even before it becomes consummate.¹⁶ Protection in this way should be the limit of the interference by the courts in the husband's lifetime, whether the title remains in him, or has been transferred.

ANNULMENT OF MARRIAGES ON THE GROUND OF FRAUD.—In this country the annulment of marriages on the ground of fraud is allowed with greater liberality than in England.¹ There a marriage may be avoided only for *fraud in the factum* or that fraud which procures an appearance without a reality of consent, and fraud inducing a real consent is no grounds for declaring the marriage a nullity.² In the United States the courts generally have relaxed the stern and simple doctrine of England and under penalty of establishing one more difficult of application have granted relief in certain cases of exceeding hardship.³ So concealment by the woman of the fact that at the time of the marriage she is pregnant by another man, is fraud sufficient to entitle the husband to have the marriage avoided.⁴ This departure from the severe English rule seems a salutary innovation in the common law; the imposition of the support of spurious children upon an innocent husband and the unfitness of the wife to execute the marriage contract and to take upon herself the duties of a chaste and faithful wife, appear sufficient reasons for granting the relief. Similar to the law

¹⁵ Rumsey v. Sullivan, 150 N. Y. Supp. 287, 290. (Principal case.)

¹⁶ Brown v. Brown, *supra*.

¹ Moss v. Moss, L. R. (1897), Prob. Div. 263; see XIII HARV. LAW REV., 118 *et seq.*

² Moss v. Moss, L. R. (1897) Prob. Div. 263.

³ BISHOP, MAR., DIV. & SEP., § 452 *et seq.*

⁴ Sinclair v. Sinclair, 57 N. J. Eq. 222, 40 Atl. 679; Reynolds v. Reynolds, 3 Allen (Mass.) 605; Harrison v. Harrison, 94 Mich. 559, 34 Am. St. Rep. 364; Baker v. Baker, 13 Cal. 88. But in Long v. Long, 77 N. C. 304, 24 Am. Rep. 449, it was held that antenuptial pregnancy by another man, though concealed from the husband, was no ground for divorce.

of fraud in other cases, there is no fraud where the husband had knowledge of the pregnancy prior to the ceremony; and he is put on notice of her unchastity and the probability of her being pregnant where he himself has been guilty of improper relations with her before the marriage.⁵

Since neither the duty of fostering children nor his own nor incapacity of the wife, result from mere incontinence on her part, concealment of this fact is not grounds for annulment.⁶ The distinction between mere incontinence and pregnancy seems well taken; the former relates only to her conduct and character before the wedding ceremony, the latter carries material and far reaching results into the marriage status.

Where consent to the marriage has been induced by one of the parties affected with a venereal disease, by concealment or misrepresentation of the fact, such fraud has been held ground for annulment.⁷ The danger to the other party due to the contagion of the disease and the probability of defective issue from one affected by such disease gives this person certain aspects of an impotent person and so under such conditions the question arises as to his physical capacity to contract marriage. But in the absence of statute or of mitigating circumstances, as where the marriage has not been consummated, or in rarer cases where there has been no offspring, the rule is by no means as well settled as certain *dicta* and the text writers indicate; the decree is often refused.⁸

In all cases of this nature much weight is given to the plaintiff's cause when there has been no consummation of the marriage and also, to a lesser degree, where there is no offspring.⁹ Indeed, it has been said that under such circumstances, the courts may de-

⁵ *Seilheimer v. Seilheimer*, 40 N. J. Eq. 412, 2 Atl. 376; *Crehore v. Crehore*, 97 Mass. 330, 93 Am. Dec. 98; *Franke v. Franke*, 96 Cal. xvii, 31 P. 571, 18 L. R. A. 375; *Bahrenburg v. Bahrenburg* (N. Y. Sup. Ct.), 150 N. Y. S. 589. Where a woman induces a man to marry her by a false representation that she is pregnant by him the decree will not be granted. *Tait v. Tait*, 3 Misc. (N. Y.) 218, 23 N. Y. S. 597; *Hoffman v. Hoffman*, 30 Pa. 417. Under the peculiar construction of the New York statute giving the chancellor jurisdiction to avoid any marriage procured by fraud, etc., the marriages have been declared a nullity under circumstances of this nature. *Di Lorenzo v. Di Lorenzo*, 174 N. Y. 467, 95 Am. St. Rep. 609.

⁶ *Leavit v. Leavit*, 13 Mich. 452; *Varney v. Varney*, 52 Wis. 120, 38 Am. Rep. 726. In some states this is changed by statute. Thus, in Virginia, concealment of the fact that she was "a notorious prostitute," and in Maryland, that she has had illicit carnal intercourse, are grounds for annulment.

⁷ *Crane v. Crane*, 62 N. J. Eq. 21, 49 Atl. 734. So in *Smith v. Smith*, 171 Mass. 404, 50 N. E. 943, 68 Am. St. Rep. 440, where there had been no consummation of the marriage. Likewise under statutes denying the courts their common law power of annulling marriages for fraud, etc. *Svenson v. Svenson*, 178 N. Y. 54, 20 N. E. 120; *Ryder v. Ryder*, 66 Vt. 158, 44 Am. St. Rep. 833.

⁸ *Vondel v. Vondel*, 175 Mass. 383, 56 N. E. 586, 78 Am. St. Rep. 502.

⁹ *BISHOP, MAR., SEP. & DIV.*, §§ 461, 462; *Smith v. Smith*, *supra*; *Keyes v. Keyes*, 6 Misc. (N. Y.) 355; *King v. Brewer*, 8 Misc. (N. Y.) 587.

cide as if the mere contract of marriage were up for deliberation. The law does not take cognizance of some mysterious effect produced by the mere formal announcement of the marriage where it would work injustice, especially when the parties can be put in statu quo.

For false representation or concealment of other physical defects, the spirit of the law is to deny the decree of nullity. Since there is a real consent, the rights of the parties are subservient to the general public welfare which is so indissolubly bound up with stringent marriage laws. Accordingly, where a woman is incapable of bearing children, although she has held herself out to be otherwise, if she is qualified for sexual intercourse, the marriage is valid.¹⁰ Likewise, epilepsy is no cause for avoiding the marriage.¹¹ So it may be said that according to the better doctrine and the general rule fraudulent practices intended to mislead as to character, fortune, health and the like, do not render the marriage void. In the recent case of *Sobol v. Sobol*, 150 N. Y. Supp. 248, the man represented to the woman before marriage that certain symptoms were only those of a cold, when in fact he was afflicted with tuberculosis, and was aware of the fact. This was held sufficient fraud to entitle the wife to an annulment of the marriage. The court was influenced by the fact that the wife cohabited with the husband only for a short time, and there had been no material change of status, and hence it felt itself at liberty to pronounce void a marriage fraught with such dire consequences to the future children of the union. The decision under the circumstances seems sound.

¹⁰ *Wendel v. Wendell*, 22 Misc. (N. Y.) 152, 52 N. Y. Supp. 72.

¹¹ *Lewis v. Lewis*, 44 Minn. 124, 46 N. W. 323, 9 L. R. A. 505; *Lyon v. Lyon*, 230 Ill. 266, 13 L. R. A. (N. S.) 996. But it has been held otherwise under a statute prohibiting the marriage of epileptics under penalty. *Gould v. Gould*, 78 Conn. 242, 2 L. R. A. (N. S.) 531.